

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 7, 2009

**ANITA FAYE STRODE v. WEYLIN TRENT STRODE**

**Direct Appeal from the Chancery Court for Overton County**  
**No. 18-307/18-308     Ronald Thurman, Chancellor**

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**No. M2008-00339-COA-R3-CV - Filed June 11, 2009**

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Appellant, an inmate with the Tennessee Department of Correction, appeals the trial court's denial of his Tenn. R. Civ. P. 59.02 motion for relief from a final decree of divorce. Appellant asserts that the Overton County Sheriff's Department failed to carry out a transport order to bring Appellant into court for the hearing on the divorce complaint. We vacate and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded**

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Weylin Trent Strode, for the Appellant, Pro Se

**OPINION**

Appellee Anita Faye Strode and Appellant Weylin Trent Strode were married on November 4, 2004. During the marriage, Mr. Strode was incarcerated with the Tennessee Department of Correction at Whiteville, Tennessee. On March 20, 2007, Ms. Strode filed a complaint for divorce against Mr. Strode in the Overton County Chancery Court, alleging grounds of irreconcilable differences and inappropriate marital conduct on the part of Mr. Strode. A Marital Dissolution Agreement ("MDA") was filed concurrently with the complaint for divorce; however, the MDA is not signed by Mr. Strode. On or about March 26, 2007, Mr. Strode filed his answer to the complaint for divorce in the form of a letter denying the material allegations of the complaint. On April 18, 2007, Mr. Strode filed an amended response to the complaint, wherein he denies the allegations contained therein. From our reading of this amended response, it appears that Mr. Strode's response also asserted a counterclaim for divorce on the ground of abandonment on the part of Ms. Strode.

On May 3, 2007, Mr. Strobe filed an acceptance of service of process, wherein he “waive[s] issuance of service of process and subject[s] [him]self to the jurisdiction of the [trial court]” for purposes of the divorce complaint. On or about May 4, 2007, the trial court entered an Affidavit of Indigency for Mr. Strobe.

On September 17, 2007, the trial court entered an order setting a hearing date on December 11, 2007. This order states that Mr. Strobe received notice of the hearing date, and the certificate of service indicates that a copy of the order was delivered to Mr. Strobe. On September 17, 2007, the trial court also entered a transport order. In relevant part, the transport order states that “the Overton County Sheriff’s Office [ is to] make arrangements to transport [Mr. Strobe] from the Whiteville Correctional Facility for appearance in [court]...on the 11<sup>th</sup> day of December, 2007, at 9:00 am.”

On December 11, 2007, Mr. Strobe failed to appear at the scheduled hearing. The hearing proceeded with Ms. Strobe and her attorney present. On December 17, 2007, the trial court entered a final decree granting Ms. Strobe a divorce on the ground of inappropriate marital conduct. On December 31, 2007, Mr. Strobe filed a Tenn. R. Civ. P. 59.02 motion for relief from the final decree of divorce. Therein, Mr. Strobe asserts that the transport order was not carried out by the Overton County Sheriff’s Department, “thus causing a substantial hardship to [Mr. Strobe],” and denying him his due process rights. Mr. Strobe’s motion was apparently not heard until October 1, 2008 (the record does not indicate the cause of this delay). Following that hearing, the trial court issued its order on October 12, 2008, denying Mr. Strobe’s motion for Tenn. R. Civ. P. 59.02 relief. He appeals.<sup>1</sup>

The sole issue before this Court is whether the trial court erred in denying Mr. Strobe’s motion for Tenn. R. Civ. P. 59.02 relief. We are cognizant of the fact that Mr. Strobe is proceeding *pro se*. While a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, *Hodges v. Tenn. Att’y Gen.*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000) (citing *Paehler v. Union Planters Nat’l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App.1997)), “[p]ro se litigants are not ... entitled to shift the burden of litigating their case to the courts.” *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App.2000) (citing *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194-95 (D.C.Cir.1983)). *Pro se* litigants must comply with the same substantive and procedural law to which represented parties must adhere. *Hodges*, 43 S.W.3d at 920-21. Moreover, this Court’s review is limited to the appellate record and it is incumbent upon the appellant to provide a record that is adequate for a meaningful review. Tenn. R. App. P. 24(b). In the instant case, the record is very sparse. It contains neither a transcript of the evidence adduced at any of the hearings, nor a Tenn. R. App. P. 24 statement of the evidence. Moreover, there was no affidavit filed with the Tenn. R. Civ. P. 59.02 motion from which this Court can determine the reason the transport order was not followed.

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<sup>1</sup> We note that no brief was filed by the Appellee in this appeal.

We review a trial court's denial of a Tenn. R. Civ. P. 59 motion to alter or amend a judgment under an abuse of discretion standard. **Chambliss v. Stohler**, 124 S.W.3d 116, 120 (Tenn. Ct. App.2003). A trial court abuses its discretion only when it has applied an incorrect legal standard or has reached a decision which is against logic or reasoning that caused an injustice to the party complaining. **Eldridge v. Eldridge**, 42 S.W.3d 82, 85 (Tenn.2001).

Motions to alter or amend a judgment pursuant to Tenn. R. Civ. P. 59 may be granted “(1) when the controlling law changes before a judgment becomes final, (2) when previously unavailable evidence becomes available, or (3) when, for sui generis reasons, a judgment should be amended to correct a clear error of law or to prevent injustice.” **Whalum v. Marshall**, 224 S.W.3d 169, 175 (Tenn. Ct. App.2006). As the moving party, Mr. Strode had the burden of demonstrating a basis for vacating the judgment. As noted above, this record is very sparse, containing no transcript, statement of the evidence, or affidavit. That being said, it is undisputed in the record that Mr. Strode was not transported to the court for the December 11 hearing.

Because it is undisputed that Mr. Stode was incarcerated at the time of the hearing and that he was not transported in accordance with the court order, we conclude that he has met his burden of proof under Tenn. R. Civ. P. 59. From its plain language, the order was a mandate to the Sheriff to transport Mr. Strode to court. The record does not provide us with the reason the order was not complied with. However, under these circumstances we cannot attribute any fault to Mr. Strode for his failure to appear at the hearing.

In **Knight v. Knight**, 11 S.W.3d 898 (Tenn. Ct. App. 1999), a prisoner’s wife filed for divorce while the prisoner was incarcerated and the prisoner answered and filed a counterclaim for divorce. Although the prisoner filed a motion seeking to be transferred to court for the hearing, the trial court did not rule on this motion. The divorce hearing proceeded with the prisoner absent, and the court entered an order granting wife a divorce. After the appeal was filed, the trial court entered an order *nunc pro tunc* denying the prisoner’s request for transfer, but stating that any testimony could be proffered through deposition. Finding that the trial court failed to give due consideration to the prisoner’s motion, this Court vacated the judgment and remanded the case. The instant case differs from **Knight** in that, here, the trial court actually entered a transport order requiring the Sheriff to bring Mr. Strode into court for the divorce hearing.

Tenn. Code Ann. § 41-21-304 provides, in relevant part that:

(a) In no civil case can an inmate be removed from the penitentiary to give personal attendance at court, but testimony may be taken by deposition, as in other cases, the party seeking the testimony being required to make affidavit that the inmate is a material witness in the cause.

Despite the absolute language of the statute, relevant case law supports the proposition that the “constitutional rights to due process and reasonable access to the courts may sometimes require

that a party litigant be personally present in court, even if the litigant is incarcerated.” ***Brown v. Brown***, No.01-A-01-9510-CV-00480, 1996 WL 563877, \*3 (Tenn. Ct. App. Oct. 4, 1996). The factors to be considered in determining whether a prisoner should be transported to court for hearing in a civil matter are myriad. *See Knight*, 11 S.W.3d at 902-905. Based upon the entry of the transport order, it appears that the trial court, in its discretion, found sufficient reason for Mr. Strode’s presence at the hearing on the complaint for divorce. The issue of whether the entry of the order was justified is not before us in this appeal. Rather, Mr. Strode asserts that he is entitled to relief from the final decree of divorce based upon the fact that the order was not carried out. We agree. The fact that there is a transport order in this record leads us to conclude that the court had a justifiable reason for requiring Mr. Strode’s presence at the divorce hearing. Consequently, the fact that the court adjudicated the divorce complaint with Mr. Strode being absent from the hearing, in the face of an order mandating his appearance, requires us to vacate the order and remand for further hearing.

For the foregoing reasons, we vacate the order of the trial court, granting Ms. Strode a divorce. We remand the matter for such further proceedings as may be necessary and consistent with this opinion. Costs of this appeal are assessed against the Appellee, Anita Faye Strode, for which execution may issue if necessary.

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J. STEVEN STAFFORD, J.